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Supreme Court, U.S.
FILED

08-280 AUG 28 2008

OFFICE OF THE CLERK
William K. Suter, Clerk

No. ____

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2007

STATE OF OHIO *EX REL.* RONALD SLOUGH,
Petitioner,

v.

HON. KRISTINA D. FROST, Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Ohio

PETITION FOR A WRIT OF CERTIORARI

Bruce Comly French
Counsel for Petitioner
P. O. Box 839
Lima, Ohio 45802-0839
(419) 222-9134
(419) 222-9437 (Facsimile)

August 28, 2008

QUESTION PRESENTED

The state supreme court erred in failing to issue a writ of mandamus to direct its clerk to accept the appeal of petitioner, resulting in a denial of due process, notwithstanding the fact that the United States Postal Service delivery confirmation showed that the appeal papers were timely filed.

LIST OF PARTIES

Ronald Slough is the petitioner and the appellant below.

The Honorable Kristina D. Frost, Clerk of the Supreme Court of Ohio, is the respondent.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2007

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Ronald Slough, respectfully requests that a writ of certiorari issue to the Supreme Court of Ohio to review its judgment entered on June 4, 2008.

OPINION BELOW

The In Mandamus Entry of The Supreme Court of Ohio is reprinted in the appendix herein, p. 1a. *infra*.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to hear this petition for certiorari pursuant to 28 U.S. Code §1257 which states in pertinent part "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where...any title, right, privilege, or immunity is specially set up or claimed under the Constitution."

The Supreme Court of Ohio rendered its decision overruling petitioner's request for a writ of mandamus to direct its clerk to accept his appeal in the related case, *Slough v. Lucas County Sheriff, et al.*, on June 4, 2008. (See Appendix p. 1a.) (Justice

Robert R. Cupp, dissenting) Petitioner's due process rights under the Fourteenth Amendment have been violated, and this case is properly before this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV of the Constitution of the United States

*****

Section 1. ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;....

Article IV, Section 2 of the Constitution of the State of Ohio

(B) (1) The supreme court shall have original jurisdiction in the following:

(b) Mandamus;

Rules of Practice of the Supreme Court of Ohio, Rule 2

Section 1. Types of appeals

(A) Appeals from Courts of Appeal

(2) Claimed appeals of right. An appeal that claims a substantial constitutional question, including an appeal from the

decision of a court of appeals under App.R 26(B) in a noncapital case, may invoke the appellate jurisdiction of the Supreme Court and shall be designated a claimed appeal of right. In accordance with S.Ct.Prac.R III, the Supreme Court will determine whether to accept the appeal.

(3) Discretionary appeals. An appeal that involves a felony or a question of public or great general interest invokes the discretionary jurisdiction of the Supreme Court and shall be designated a discretionary appeal. In accordance with S.Ct.Prac.R III, the Supreme Court will determine whether to accept the appeal.

Section 2. Institution of appeal from court of appeals.

(A) Perfection of Appeal.

(1)(a) To perfect an appeal from a court of appeals to the Supreme Court, other than in a certified conflict case (which is addressed in S.Ct.Prac.R. IV), the appellant shall file a notice of appeal in the Supreme Court within 45 days from the entry of the judgment being appealed. The date the court of appeals filed its judgment entry for journalization with its clerk, in accordance with App.R.22(E), shall be considered the date of entry of the judgment being appealed. If the appeal is a

claimed appeal of right or a discretionary appeal, the appellant shall also file a memorandum in support of jurisdiction, in accordance with S.Ct.Prac.R. III, at the time the notice of appeal is filed.

(b) Except as provided in divisions (A)(2), (3), and (4) of this section, the time period designated in this rule for filing a notice of appeal and memorandum in support of jurisdiction is mandatory, and the appellant's failure to file within this time period shall divest the Supreme Court of jurisdiction to hear the appeal. The Clerk of the Supreme Court shall refuse to file a notice of appeal or a memorandum in support of jurisdiction that is tendered for filing after this time period has passed.

Rules of Practice of the Supreme Court of Ohio, Rule 14

Section 1. Filing with the Supreme Court

(A) Filing defined.

The filing of documents with the Supreme Court as required by these rules shall be made by filing with the Clerk of the Supreme Court during regular business hours of the Clerk's Office. Documents received in the Clerk's Office after 5:00 p.m. shall not be filed until the next business day. Only submissions filed in accordance with this provision will be

considered by the Supreme Court. Filing may be made in person or by mail addressed to the Clerk, but documents filed by mail shall not be considered filed until received in the Clerk's Office.

(D) Prohibition Against Untimely Filings.

No document may be filed after the filing deadlines imposed by these rules, set by Court order, or as extended in accordance with Section 3(B)(2) or Section 6(C) of this rule or with S.Ct.Prac.R. XIX. The Clerk shall refuse to file a document that is not timely tendered for filing. Motions to waive this rule are prohibited and shall not be filed.

Section 2. Service of documents; notice when documents are rejected for filing.

(B) Manner of Service.

(1) Except as otherwise provided by this rule, service may be personal, by mail, by e-mail, or by facsimile transmission. Except as provided in division (A) of this section, personal service includes delivery of the copy to counsel or to a responsible person at the office of counsel and is effected upon delivery. Service by mail is effected by depositing the copy with the United States Postal Service for mailing. Service by e-mail is effected upon the successful electronic transmission of the copy. Service

by facsimile transmission is effected upon the successful electronic transmission of the copy by facsimile process.

STATEMENT OF THE CASE

Ronald Slough is the party who unsuccessfully sought from the Supreme Court of Ohio a writ of mandamus directing the clerk of the court to accept his appeal in his underlying case.

Petitioner is the appellant in *Ronald Slough v. Lucas County Sheriff*, who attempted to appeal from the adverse decision of the Court of Appeals of Lucas County, Ohio, in Case No. L-07-1155. The appeal was not accepted due to its alleged untimely receipt. Here the respondent is the Clerk of the Supreme Court of Ohio, Hon. Kristina D. Frost, who is charged by law with the receipt and retention of records for the Supreme Court of Ohio. On March 7, 2008, counsel for petitioner caused to be mailed the appropriate number of notices of appeal, case information sheets, memoranda in support of jurisdiction, and a check to the Clerk of the Supreme Court of Ohio at her office in Franklin County, Ohio. These documents were mailed via U.S. priority mail, delivery confirmation requested. (See Appendix, p. 10a.) While the documents were in transit, a snowstorm affected Columbus, Ohio.

Notwithstanding the reported storm on March 7, 2008, counsel for petitioner received confirmation of delivery by the United States Postal Service by way of internet verification that delivery was effected

upon the Clerk of the Supreme Court of Ohio, the addressee of the documents. (See Appendix, p. 11a.) Having been assured by the internet verification, counsel was confident that the appeal papers were properly before the Court.

On the morning of March 11, 2008, the Clerk's Office, through an agent named Joella, called counsel's Lima office and informed his legal assistant that the pleadings had only just been received on March 11 and were, therefore, untimely.

Upon further investigation of the situation, and conversations with Joella and Justin Krudela, the same assertion was repeated, that the Clerk's Office had no record of having obtained the said documents on the tenth of March. The delivery notation on the United States Postal Service website regarding the 9:03 a.m., Monday, March 10 delivery has never been updated and was the final event of the postal employee to deliver the papers to the mailroom of the Clerk of the Supreme Court of Ohio.

Petitioner timely filed an Original Complaint of Mandamus before the Supreme Court of Ohio on March 14, 2008, requesting that the appeal be considered timely filed. On or around April 4, 2008, Respondent filed a Motion to Dismiss Petitioner's Complaint. The Supreme Court of Ohio subsequently dismissed Petitioner's Complaint in Mandamus.

ARGUMENT FOR ALLOWANCE OF WRIT

The Supreme Court of the United States has expounded that "[p]rocedural due process rules are meant to protect persons...from the mistaken or unjustified deprivation of life, liberty or property" and are meant to reduce the risk of error in truth finding. *Matthews v. Eldridge*, 424 U.S. 319, 344 (1976). Further, these rules "minimize substantively unfair or mistaken deprivations of life, liberty or property by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests. *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972). Another purpose of procedural due process is to make a person feel he has been dealt with fairly. *Carey v. Piphus*, 435 U.S. 247, 262 (1977).

In the case at bar Petitioner, having complied with the Court's rules, was thwarted by the Clerk of Court in his pursuit of an appeal of an adverse judgment. This action by the clerk was an unjustified deprivation of the right to redress of grievances because Petitioner did, in fact, present his appeal for filing to the Office of the Clerk well within the appropriate limitations period but was refused the right to file the appeal through no fault of his own. This protected interest, without redress, will go virtually unnoticed. Litigants who trust in the inner system at the clerk's office have no voice if their pleadings are received timely but not filed until the time for appeal is past. The purposes of procedural due process are at work in this case because litigants need to feel as though the Office of the Clerk has

dealt with them fairly and that the Court has done all that can be done to minimize unfair deprivations of the right to file a timely appeal. The Clerk of Court clearly violated her non-discretionary ministerial duty to date and stamp all timely-received pleadings when she failed to time stamp petitioner's appeal, resulting in a violation of petitioner's procedural due process rights.

According to the Ohio Revised Code, a clerk is required "to endorse the date of filing on each document filed in a case, and the file-stamped date is presumed to reflect the actual date of filing." *Ins. Co. of N. Am. v. Reese Refrig.*, 89 Ohio App.3d 787 at 790-91, 627 N.E.2d 637 (1993). However, this presumption can be rebutted "by evidence showing that the clerk received the document on a different date." *State v. Cuyahoga Co. Bd. of Elections*, 2006 Ohio 1665 at *10 (citing *Kloos v. Ohio Dep't. of Rehab. & Corr.*, Franklin App. No 87AP-1215, 1988 Ohio App. LEXIS 1744 (May 3, 1988, Unreported)).

In the present case, petitioner has verifiable evidence, which was attached to his Original Complaint in Mandamus, which states that the documents which are the subject of this action were, in fact, received by an agent of the Clerk of Court of the Supreme Court of Ohio on a different date than the date of the file stamp by the clerk's office. In *State v. Cuyahoga County Board of Elections*, the record showed that papers were submitted by mail and received on the last day of allowed filing. The drop-dead date was 4:00 p.m., and an employee of the recipient's office was notified at 3:45 that the

package had arrived. She did not pick it up until 4:30 and time stamped it at 4:33 p.m. Accordingly, it was file stamped after the date and time which was required. Although the court ultimately decided that mandamus was not appropriate because of the fact that the petitioner mailed the documents just in time to be delivered fifteen minutes before the statute of limitations had run, the court entertained the notion of a situation where mandamus would be appropriate under similar facts. The court stated:

> Although we acknowledge that, ultimately, a party seeking relief has the duty to present a request for relief in a timely manner, Board staff could easily have processed this correspondence prior to the deadline for filing. Prompt action would have eliminated any need for the Board and this court to address the issue of 'what constitutes filing.'

State v. Cuyahoga Co. Bd. of Elections, 2006 Ohio 1665 at *8. In the case at bar, Petitioner's counsel did not wait until the last possible hour to mail the petitioner's appeal but, instead, gave ample time and, in fact, had the documents delivered to the court at 9:03 a.m. on the day they were due, giving a full work day for the clerk's office to file them timely. This is not the case where petitioner is challenging the court to cover up the fact that he had neglectfully mailed the documents without giving adequate time to factor in possible mishaps in transit. Rather, counsel requested delivery confirmation, checked and re-checked such confirmation, and was confident that

the Clerk of Court would perform her duties in a timely manner.

In *Rhoades v. Harris*, the court held that a case with similar facts was "not a case where the plaintiff mailed the complaint but the court [could] only speculate as to the time the clerk received it." Instead, "the unrefuted evidence showed that the clerk actually received [the] complaint before the expiration of the statute of limitations." *Rhoades v. Harris*, 135 Ohio App.3d 555, 558, 735 N.E 2d 6, 8-9 (1999). Although this case considered the implications of a "drop box" and not a United States Postal Service confirmed mailing, the outcome should be the same. If a petitioner has proof that the document was, in fact, delivered to the proper and usual place well within the appropriate limitations period, it cannot be reasonable for the clerk to delay placing a file stamp upon the document for hours upon hours, effectively barring the claim.

In discussing an unreported case, *Insurance Company of North America v. Reese Refrigeration* explained a scenario where the complaint was not file stamped until after the limitations had run but "[b]ecause the plaintiff produced a certified mail receipt card showing his complaint was timely delivered to the Ohio Court of Claims' office and received by an agent for the court, the file stamp date on the complaint was not permitted to serve as the basis for barring plaintiff's claim." *Ins. Co. of N. Am. v. Reese Refrig.*, 89 Ohio App.3d 787, 627 N.E.2d 637 (citing *Kloos v. Ohio Dep't. of Rehab. & Corr.*, 1988 WL 44745 May 3, 1988). This case is most

analogous to the case at bar. Petitioner has shown evidence of delivery confirmation to the Clerk of Court's mailroom at 9:03 a.m. on March 10, 2008, by USPS internet verification in the early afternoon of the same day. Petitioner or his counsel has no personal knowledge of the operations of the clerk's mailroom, but one thing is clear: the papers were in the possession of the clerk at 9:03 a.m. and this counsel has no information as to why the clerk's office did not mark them as received until twenty-four hours later. If it widely accepted that "clerks generally file-stamp papers immediately upon delivery and receipt," so the file stamp date is usually indicative of the date the paper was filed. *See Ins. Co. of N. Am. v. Reese Refrig.*, 89 Ohio App.3d 787, 627 N.E.2d 637. Because it is obvious upon the face of the complaint and attachments that the documents were not file stamped the same day they were received, the clerk of court violated her duty to Petitioner. This evidence alone is clearly enough to refute the presumption that a document is filed on the date the clerk time stamps it.

As counsel for Respondent aptly cites in her motion to dismiss Petitioner's mandamus action, one must demonstrate that "(1) he has a clear legal right to the relief requested, (2) the respondent is under clear legal duty to perform the requested act, and (3) the relator has no plain or adequate remedy in the ordinary course of law." *State ex rel. Ohio Civ. Serv. Employees Assn. Local 11 v. State Empl. Rels. Bd.*, 104 Ohio St.3d 122 (2004). Firstly, Respondent then alleged that she has no clear legal duty to file the tendered documents which consisted of Petitioner's

appeal. The precedent used, although correct, does not address the issue at hand. The documents in question were not untimely filed; and therefore, the duty of the clerk to not accept untimely pleadings is not at play here. Instead, because the documents were, in fact, delivered to the possession of the Clerk of Court well within the statute of limitations, the clerk had a clear duty to file those documents. The Ohio Supreme Court expounded:

> It is the duty of the clerk of this court, in the absence of instructions from the court to the contrary, to accept for filing any paper presented to him, provided such paper is not scurrilous or obscene, is properly prepared and is accompanied by the requisite filing fee.

State ex rel. Wanamaker v. Miller, 164 Ohio St. 176, 177, 128 N.E.2d 110 (1955). As shown from the exhibits, Petitioner's appeal was accomplished by the proper filing fee and was tendered on the morning of the date it was due, making it properly prepared by usual standards. Accordingly, the clerk was under a clear legal duty to accept the appeal as timely filed.

Next, Respondent contends that Petitioner does not have a clear legal right to the relief he requests. It is asserted that "[c]onfirmation of receipt at the United States Post Office in Columbus does not meet the requirements for filing;" and, therefore, because Petitioner did not meet the deadline, he has waived his right to an appeal. Of particular importance is the fact that the

confirmation did not confirm receipt at the post office, but instead confirmed received under the care of the Clerk of Court of the Supreme Court of Ohio. The receipt reads:

- Delivered, March 10, 2008, 9:03 am, COLUMBUS, OH 43215
- Arrival at Unit, March 10, 2008, 8:58 am, COLUMBUS, OH 43215
- Processed, March 08, 2008, 11:50 pm, COLUMBUS, OH 43218
- Acceptance, March 07, 2008, 4:38 pm, LIMA, Ohio 45801

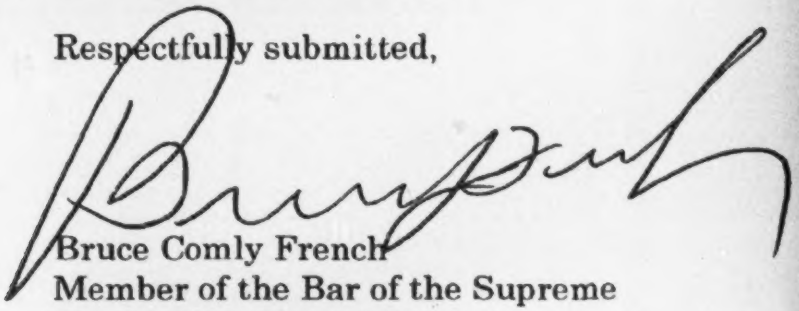
Common sense would dictate that "arrival at unit" and "delivered" are terms used to describe when a package have been tendered to its final destination. Additionally, the zip codes listed for the place of processing and place of delivery are different, obviously, dictating that once the package was received by the post office on March 8, 2008, it was taken to a different destination, the supreme court, for delivery. Petitioner is clearly not requesting that because his appeal had reached the Columbus area by the drop-dead date he should be given preferential treatment in filing. He is well aware and respectful of the mandatory time limit restrictions imposed by the Supreme Court of Ohio. Simply stated, Petitioner complied with all mandates and rules of the Court; and for unknown reasons outside of his control, the clerk failed to time stamp his appeal until nearly twenty-four hours after it had been entrusted to her care. Petitioner clearly has not

waived the right to an appeal and still has that clear right as a matter of standard appellate procedure.

CONCLUSION

For the foregoing reasons, the petitioner respectfully requests that this Court reverse the judgment of the Supreme Court of Ohio and direct it to enter its order in mandamus to its clerk to accept his timely-filed appeal in the related case.

Respectfully submitted,



Bruce Comly French
Member of the Bar of the Supreme Court of the United States
Counsel for Petitioner
P. O. Box 839
Lima, Ohio 45802-0839
(419) 222-9134
(419) 222-9437 (Facsimile)

The Supreme Court of Ohio

State of Ohio *ex rel.* Ronald Slough

Case No. 2008-0529

v.

IN MANDAMUS

Honorable Kristina D. Frost

ENTRY

This cause originated in this Court on the filing of a complaint for a writ of mandamus. Upon consideration of respondent's motion to dismiss,

It is ordered by the Court that the motion to dismiss is granted. Accordingly, this cause is dismissed.

/s/Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

File stamped June 04, 2008

OHIO REVISED CODE

CHAPTER 2731

2731.01 Mandamus defined.

Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.

2731.02 Courts authorized to issue writ – contents.

The writ of mandamus may be allowed by the supreme court, the court of appeals, or the court of common pleas and shall be issued by the clerk of the court in which the application is made. Such writ may issue on the information of the party beneficially interested. Such writ shall contain a copy of the petition, verification, and order of allowance.

2731.04 Application for writ.

Application for the writ of mandamus must be by petition, in the same of the state on the relation of the person applying, and verified by affidavit. The court may require notice of it to be given to the defendant, or grant an order to show cause why it should not be allowed, or allow the writ without notice.

2731.05 Adequacy of law remedy bar to writ.

The writ of mandamus must not be issued when there is plain and adequate remedy in the ordinary course of the law.

2731.06 Peremptory writ in first instance.

When the right to require the performance of an act is clear and it is apparent that no valid excuse can be given for not doing it, a court, in the first instance, may allow a peremptory mandamus. In all other cases an alternative writ must first be issued on the allowance of the court, or a judge thereof.

EXCERPTS from Memorandum in Support of Jurisdiction of Appellant Ronald Slough, Court of Appeals No. L-07-1155, *Ronald Slough v. Lucas County Sheriff*

Proposition of Law No. I: Using a dismissed indictment and illegally obtained evidence which was excluded in a criminal proceeding to terminate a law enforcement officer violates the officer's Fourth and Fifth Amendment rights.

Proposition of Law No. II: Collateral estoppel precludes the use of illegally seized evidence suppressed in a criminal case in a subsequent administrative proceeding which causes a law enforcement officer to lose his Fourteenth Amendment Property interest in his continued governmental employment.

Proposition of Law No. III: The Sheriff's termination of a law enforcement officer for conduct unbecoming of an employee requires competent and probative evidence on the record.

Proposition of Law No. IV: The Second Amendment, incorporated to the states through the Fourteenth Amendment, precludes Ohio's regulation of personal armaments held for the purpose of a personal collection.

Statement of the Case

This matter arose as a result of Deputy Ronald Slough's (hereinafter "Appellant") December 1, 2004

termination from the Lucas County Sheriff's Office (hereinafter "LCSO"). On December 8, 2006, Appellant's union, Ohio Patrolmen's Benevolent Association (hereinafter "OPBA") timely filed an appeal of the termination, on Appellant's behalf, with the State Personnel Board of Review (hereinafter "SPBR").

On or about September 20, 2005, while the case was pending with SPBR, Appellant filed a Motion in Limine requesting the Administrative Law Judge (hereinafter "ALJ") to exclude from evidence any reference to weapons that Lucas County Sheriff representatives seized from Appellant's home on July 15, 2004. The seized weapons, which LCSO claimed to be illegal and which were alleged to provide LCSO with justification for Appellant's termination, had been excluded from evidence in the concurrent criminal case against appellant. The criminal court found the weapons had been illegally seized in violation of Appellant's Constitutional rights. Despite such a finding by a court of general jurisdiction, the ALJ denied the Motion in Limine and allowed LCSO to present information about the seized weapons as evidence in its case to support Appellant's termination.

On February 23, 2006, the ALJ, after consideration of documentary evidence and briefs, issued a Report and Recommendation that SPBR affirm the termination of Appellant's employment. Appellant timely filed an objection to the Report and Recommendation. On May 18, 2006, the SPBR

adopted the Report and Recommendation over Appellant's objection.

Appellant timely appealed to the Lucas County Court of Common Pleas seeking to reverse SPBR's decision to affirm his termination from employment with LCSO. On April 5, 2007, the Lucas County Court of Common Pleas (hereinafter "trial court") affirmed the order of the SPBR. Appellant them timely appealed to the Lucas County Court of Appeals, receiving an adverse judgment on January 25, 2008. Appellant now timely appeals to the Ohio State Supreme Court.

Factual History

On July 15, 2004, representatives of the Lucas County Sheriff seized weapons, without a search warrant, from the home of Appellant as part of an alleged internal investigation. The LCSO representatives took the weapons while Appellant was not present and without his permission. As a result of the seizure, Appellant was indicted for two counts of unlawful possession of dangerous ordnance allegedly in violation of Ohio Revised Code Section 2923.17(A) and (D). However, Appellant continued to conduct his official duties as Deputy Sheriff for five months after the seizure of his weapons and, in fact, he was chosen during that time to protect Vice President Richard Cheney during a visit to Toledo. Additionally, Appellant received a positive employee performance evaluation prior to termination.

Upon indictment, Appellant's employment was terminated pursuant to Ohio Revised Code Section 124.34. The December 1, 2004 Order states:

> Deputy Sheriff Ron Slough did have in his possession certain weapons and/or ordnance that was illegal for him to possess which resulted in felony indictments being filed against him. Deputy Ron Slough's actions of being in possession of these weapons/ordnance and being indicted for such possession violates rules #1-Law Violations and #7-Conduct Unbecoming of an Employee of the Lucas County Sheriff's Office Rules and Regulations.

Appellant's termination was timely and properly appealed to the SPBR on December 8, 2004. On January 31, 2005, Appellant, through his criminal defense counsel, filed in the state trial court a Motion to Suppress all evidence seized from his home on July 15, 2004. On February 15, 2005, a hearing was held before Judge Denise Ann Dartt with respect to Appellant's motion. On June 8, 2005, Judge Dartt issued an Opinion and Journal Entry granting Appellant's Motion to Suppress. Judge Dartt found that because 1) the seizure occurred in Appellant's home, 2) the state had ample time to secure a search warrant and failed to do so, 3) the investigation was internal (not criminal), and 4) Appellant had not waived his Constitutional right, the evidence seized as part of an internal investigation could not be used in a criminal proceeding.

Because of the illegal search of Appellant's home and the suppression of all evidence obtained as a result of said illegal search, all criminal charges were dismissed on June 20, 2005. On September 20, 2005, Appellant filed a Motion in Limine requesting the SPBR to exclude all illegally seized evidence from his home consistent with the ruling of Judge Dartt. On November 22, 2005, the ALJ issued a perfunctory Procedural Order overruling Appellant's Motion in Limine, in part, by allowing evidence regarding two of the illegally seized weapons. The disputed guns were purchased by Appellant as collector's pieces and were never loaded or fired in Slough's possession. Further, the magazine for the gun was purchased in 1994, and before the illegal seizure, had remained in the manufacturer's original sealed box. The guns were kept by Appellant as pieces of a larger valuable collection of heirlooms and retained due to their worth as collector's items, with no intent to ever fire or load them.

Before the SPBR, Appellant submitted argument, attached evidence and supporting authority, all of which showed that he must be reinstated with full back pay and benefits. However, the ALJ, on February 23, 2006, issued an adverse recommendation. On May 18, 2006, the SPBR adopted the Report and Recommendation over Appellate's objection and subsequent appeals to the Court of Common Pleas and the Court of Appeals were filed. The Court of Common Pleas rejected Appellant's argument that because the evidence in his criminal case had been suppressed, the SPBR

was precluded from considering such evidence concerning unlawfully seized weapons in his employment termination hearing in upholding the SPBR's decision. The Appeals Court affirmed. None of these courts considered Appellant's Second Amendment arguments.

[Footnotes omitted.]

U.S. Postal Service™ Delivery Confirmation™ Receipt

DELIVERY CONFIRMATION NUMBER: 0307 3330 0001 1355 5212

Postage and Delivery Confirmation fees must be paid before mailing. 168

Article Sent To: (to be completed by mailer)

Sullivan Center of Qual

Please Print Clearly

65 So Main ST

Conn

POSTAL CUSTOMER:
Keep this receipt. For inquiries:
Access internet web site at
www.usps.com®
or call 1-800-222-1811

CHECK ONE (POSTAL USE ONLY)

- [x] Priority Mail™ Service
- [ ] First-Class Mail® parcel
- [ ] Package Services parcel

PS Form 152, May 2002 (See Reverse)

Best Available Copy

UNITED STATES
POSTAL SERVICE

Track & Confirm

Search Results

Label/Receipt Number: 0307 3330 0001 1355 5212
Detailed Results:

- Delivered, March 10, 2008, 9:03 am, COLUMBUS, OH 43215
- Arrival at Unit, March 10, 2008, 8:58 am, COLUMBUS, OH 43215
- Processed, March 08, 2008, 11:50 pm, COLUMBUS, OH 43218
- Acceptance, March 07, 2008, 4:38 pm, LIMA, OH 45801

* * * * *